

Panaji, 29th March, 1990 (Chaitra 8, 1912)

SERIES II No. 52

OFFICIAL GAZETTE



GOVERNMENT OF GOA

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Planning Department

Order

No. 4/19/75-PLG-Vol. II (Part).

Sanction of the Government is hereby accorded to extend the period of ad-hoc appointment of the following officers of Common Statistical Cadre of the Directorate of Planning, Statistics and Evaluation, Panaji for a further period upto 31.12.90 or till the appointments are regularised, whichever is earlier:—

1. Shri S. H. Bhat, Statistical Officer, Social Welfare Department, Panaji-Goa.
2. Smt. Maria F. M. de Saldanha, Research Assistant, Directorate of Planning, Statistics & Evaluation, Panaji-Goa.
3. Shri C. B. Pankar, Research Assistant, Directorate of Planning, Statistics & Evaluation, Panaji-Goa.
4. Shri A. K. Nagvekar, Research Assistant, Labour and Employment, Panaji-Goa.

By order and in the name of the Governor of Goa.

K. A. Satardekhar, Under Secretary (Planning).

Panaji, 21st March, 1990.

Education Department

Order

No. 16-1-88-EDN(K)

Read: Government Order No. 16-1-88-EDN(K) dated 21.4.89 and 11.7.89.

The ad-hoc appointment of Shri Srinil J. Kamat to the post of Lecturer in Electronics & T. C. in Goa College of Engineering, Farmagudi is hereby extended for a further period of 6 months w.e.f. 23.3.90 under the same terms and conditions or till the post is filled up on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

A. P. Panvelkar, Under Secretary (Education).

Panaji, 20th March, 1990.

Revenue Department

Corrigendum

No. 22/144/89-RD

Read: Government Notification No. 22/144/89-RD dated 4/10/1989, published in Official Gazette Series II,

No. 31, at pg. 330, dated 2-11-1989 and in two Newspapers (1) The Navhind Times dated 12/10/1989 (2) Gomantak dated 17/10/1989.

The area shown as 36.00 sq. mts. in the above Notification, shall be read as 48.00 sq. metres.

By order and in the name of the Governor of Goa.

P. S. Nadkarni, Under Secretary (Revenue).

Panaji, 19th March, 1990.

Department of Labour

Order

No. 28/2/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 13th December, 1989.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Ref. No. IT/9/75

Workmen

V/s.

M/s. P. G. Virginkar & Co.

Workmen represented by Adv. P. K. Gude and Adv. S. N. Karmali.

Employer represented by Adv. B. G. Kamat.

PANAJI, DATED: 9-11-1989

AWARD

This is a reference made by the Government of Goa, by its order No. CLE/1/ID/(54)/IT/74/1503 dated 26th Dec., 1974 with an annexure scheduled thereto which reads as follows:

"Whether the action of the Management of M/s P. G. Virginkar and Co., Margao-Goa, in retrenching the workmen from services whose names are listed in the annexure

below, with effect from the dates shown against their names, is legal and justified?

If not, to what relief the workmen are entitled to?

ANNEXURE

Sr. No.	Name of the workman	Designation	Date of termination
1.	Shri Anant D. Hedge	Sr. Clerk	25-3-1974
2.	" Balkrishna G. Amonker	Jr. Clerk	25-3-1974
3.	" Motilal A. Shinde	Jr. Clerk	25-3-1974
4.	" Sham Vordekar	Jr. Clerk	25-3-1974
5.	" Jairam B. P. Gaonkar	Delivery Boy	25-3-1974
6.	" Rosario L. Mendes	Delivery Boy	25-3-1974
7.	" Khushali Y. Priolkar	Delivery Boy	25-3-1974
8.	" Naraina P. Vernekar	Delivery Boy	25-3-1974
9.	" Vishnu B. Raikar	Delivery Boy	25-3-1974
10.	" Shri Jose M. Pereira	Jr. Clerk	25-3-1974
11.	" Kashinath M. Naik	Driver	1-4-1974
12.	" Sham M. Revankar	Foreman	25-3-1974
13.	" Constancio Pereira	Mechanic	1-4-1974

After the above Government reference dated 26th Dec, 1974 was received in this office the matter was registered on 5-1-75 and as usual notices were issued to the parties. The cause of the 13 retrenched workmen is espoused by the Union and the statement of claim dated 23rd April, 1975 is signed and filed by Shri George Vaz, the then General Secretary of the Union. In his statement of claim he challenges the reasons for retrenchment of the 13 workmen given by the management in the notice of retrenchment served on the 13 workmen. He has taken objection to the legality of the retrenchment order which was to come into effect on the very day in respect of 11 workmen on 25th March, 1974 and in respect of the other 2 workmen on 1-4-74. According to him the Party II/M/s P. G. Virginikar & Co. is a Partnership concern which deals with automobiles and also effects the sale of petrol and diesel at its different pumping outlets. So also the Company was sole agent for Bajaj Matador Mini Buses, Fiat (Premier President including Safari) Fargo chassis etc. Along with these three businesses the Company had also a Garage for maintenance and repairs of private vehicles besides being the official contractor for repairs of all Mahindra and Mahindra Willy Jeeps. According to the statement for the five years preceding the retrenchment the business of the Partnership Firm in all the four categories was prosperous and the Partnership Firm was making huge profits. Inspite of the retrenchment all the petrol pumps belonging to the Partnership were running as before. According to the Union it had made a collective demand on the management sometime in January, 1974 asking for some form of Dearness Allowance to mitigate the high living cost and shrinkage of real wages. The Union therefore maintained that the real cause for retrenchment was to stop the union activities and to prevent them in forming an union. So it was claimed that the retrenchment was malafide and not for proper reasons. However, while resorting to retrenchment which was infact victimisation the principle of 'first come last go' was not followed and senior employees were retrenched while junior employees were continued in service. On this count also the retrenchment order was stated to be malafide, illegal and unjustified and amounted to victimisation of the workmen due to their peaceful trade union activities. About the retrenchment compensation paid or offered to the workmen, the workmen were advised to take whatever compensation that was offered because subsequent industrial adjudication was going to be a time consuming process. Hence it was lastly claimed that the compensation received already by the workmen under protest be adjusted against the back wages.

As against this the Written Statement on behalf of the Partnership firm is filed by the Partner G. N. Virginikar on 5th Aug., 1975 contending interalia that some of the workmen joined the union after the retrenchment, solely for the purpose of raising an industrial dispute with the employer. On this count it is claimed that the Union has no locus standi to sponsor the dispute of the workmen. On this count it is claimed that the Gen. Secretary of the Union had no authority to sign the claim statement on behalf of all the workmen. About the retrenchment it is claimed that the workmen were retrenched for valid reasons quoted in 2(i) to 2(iv). About the business activities of

the Partnership firm in 4 categories it is denied that it has a Garage for maintenance and repairs of private vehicles. About the business it is claimed that there was no much profit and that the sale of diesel and petrol at the petrol pumps had gone down. It is also denied that the principle of 'first come last go' was not followed and that the junior employees were retained while seniors were retrenched. On the main cause of retrenchment it is submitted in para 10 that the employer while exercising his managerial discretion to reorganize and rearrange his business in the manner in which the employer it to be best to effect the retrenchment of the surplus staff. On this count it is further submitted that there is no material bearing on the question whether the scheme of re-organisation of the business adopted by the employer was bonafide or not. On this count it is stated that there is no question of any victimisation. About the activities in the four branches it is submitted in para 15 of the Written Statement that these departments are distinct and complete units, each of them constituting a separate establishment. Extending this line of argument further it is stated that the employer firm conducted an overall review of the company's working in all the four departments and decide to re-organise all the lines of the business by closing some branch or by abolishing some posts. About the display of seniority list it is stated that on 5/6 February, 1974 in every department lists of employees showing their seniority amongst them categorywise was displayed. It is therefore claimed that there was no malafide intention in the order retrenching 13 workmen.

To this Written Statement the Union through its Gen. Secretary George Vaz filed the rejoinder on 28-8-75 claiming that the union was already formed and it had a right to raise an industrial dispute on behalf of its member workmen. It is further claimed that the provisions of Sec. 25F and 25G of the I.D. Act are not followed and they are violated. About the four categories of the business and employees in those four categories the union claims that all the four units are run by the same establishment and employees from one unit were transferable to the remaining three units under the same establishment under the common employer.

From the scrutiny of the case papers it appears that no separate issues were framed by my Predecessor but the govt. reference itself was treated as the main issue and the parties went on trial. Even though the rejoinder was filed in September, 1975 the actual recording of evidence commenced sometime in 1979. It appears from the records that even though as many as 13 workmen are retrenched by the management of Party II 9 (nine) workmen whose cause was espoused by the union on their behalf have evinced no interest in this matter of govt. reference and they have categorically remained aloof from the entire proceedings. Even though Shri Karmali, Advocate, appears for the workmen Hegde and Shri Gude for the rest of the workmen there is nothing on record showing that these 9 workmen had evinced any interest in this proceeding. Hence I do not propose to record any finding as regards these 9 absentee workmen and I shall confine my discussions to the 4 workmen who have actively participated in the proceedings of the case and their evidence too is recorded. The first witness to be examined as seen from the record is the workman Motilal A. Shinde who joined as a clerk in 1967 and his evidence is recorded on 6-5-80. This workman and the other two workmen Jairam B. P. Gaonkar, the Oilman working on the petrol pump and Sham Revankar working as a Mechanic was recorded on 12-3-80 and 28-2-79. These 3 workmen are represented by Shri Gude, Advocate and the 4th workman who has actively participated in the proceeding is the seniormost employee Anant D. Hegde who is represented by Shri Karmali Advocate and recording of his evidence started on 4-3-80. This witness was working as a senior clerk on the petrol pump and besides he was doing multifarious duties of the Co. He joined the service in 1955 and he too was retrenched along with other 12 workmen in 1974, the question being whether the principle of 'last come first go' was followed in his case or not. Besides the evidence of these 4 workmen there is no other evidence led on behalf of the workmen. Similarly the evidence led on behalf of the management is that of one of the partners by name Gopal Virginikar, the recording of whose evidence started on 7-7-80 and recording of his evidence has made a history as the recording of evidence started in 1980 and was completed in October, 1988 and that too by appointing a Court Commissioner. This witness who was running in the age of 52 in 1980 was at the most 60 years old in 1988 but still it had become quite difficult to secure his presence and there is record showing that my Predecessor had to use coercive methods to secure the

presence of this witness whose evidence was recorded before my Predecessor Dr. R. Noronha on 13-5-86. The proceedings again started before me in April, 1988 and I have then been informed that the witness was sick and was not in a position to attend the court and so his cross examination was recorded on commission and the evidence of the management was concluded at the conclusion of his cross examination on 2.10.88. This partner of the Party II/Firm had as a matter of fact retired from the Partnership in 1981 or so as seen from the records. However, this was the only witness examined by the Partnership firm on the point of the activities of the firm and the business and profits earned by the firm which had four types of business. Before scanning the oral testimonies of the four workmen vis-a-vis the retired partner of the firm I shall broadly consider the facts which are as good as admitted facts and then I shall go on scanning the other evidence as and when necessary.

Broadly while making submissions before me it was submitted both by Shri Karmali as well as Shri Gude for the workmen that the retrenchment took place way back in 1974 when some nominal compensation was paid or offered to these 13 retrenched workmen. Those were not the days of industrial awakening and the tendency of the workmen was to submit to the actions of the management without raising an eyebrow. Hence the remaining 9 workmen who had received token compensation at the time of retrenchment had reconciled themselves to the position that it was an end of the matter so far as their services with M/s P. G. Virginkar & Co. were concerned. That is how since 1974 they did not evince any interest in the proceedings and even though the industrial dispute was raised by the union on behalf of the 13 workmen these 9 workmen have not participated in the proceedings and as a result of this I am not going to consider the merits or demerits of their cases and I shall confine myself to these four workmen only who have actively participated in the proceedings. Both the advocates for these workmen have submitted before me that the four workmen could not be expected to remain idle from 1974 onwards and they have started earning their bread one way or the other. One of them namely Shri Hegde who is the seniormost amongst them has already reached the age of superannuation and there was no question of that workman claiming reinstatement into services in the event of the order of retrenchment being set aside by this Tribunal. About the other three workmen to the position is not much different because the workman Jairam Gaonkar who was working as an Oilman on the petrol pump has now started working as a Motorcycle driver at public conveyance known as 'Pilot' in Goan parlance. This motorcycle driver had received Rs. 275 as compensation at the time of his retrenchment. The workman Motilal Shinde who was working as a Jr. Clerk is now running a hand cart to earn his bread. He had received a compensation of Rs. 630/- then. The workman Sham Revankar who was working as a Mechanic in the Motor Garage joined the service of V. M. Salgaonkar after his retrenchment in 1974. He is now lying in a paralytic condition. He had received a compensation of Rs. 1275/- This is the position as regards the three workmen represented by Shri Gude. The position of the 4th workman Anant Hegde is slightly different. He was offered compensation at the time of retrenchment but he did not accept the same as contended by him. The management had offered him compensation which he refused to accept. However, while the industrial dispute was raised by the union on behalf of the 13 workmen he raised an industrial dispute claiming Rs. 39,932.78 as compensation. The matter was settled before the Labour Commissioner at the intervention of his Adv. Karmali and his claim was settled on Rs. 10,015/- for the retrenchment compensation. At present he is working as a partner in Amu Chemist and Druggist at Margao and he had invested working capital of Rs. 25,000/- in March, 1980 when his evidence was recorded in this court.

After giving these facts about these 4 workmen who have actually participated in this proceeding it was submitted on their behalf that this Tribunal should take an overall review of the matter and see whether the compensation offered or paid at the time of retrenchment is just and adequate and in the event of the retrenchment being held to be not legal and proper and not in conformity with Sec. 25F and 25G of the Act this Tribunal should consider the question of awarding gross compensation to these four workmen by using discretion of the Tribunal as invested under Sec. 11-A of the Act. Hence from the submissions made before me at the bar the main question which survives for consideration before me is whether the retrenchment is just and legal and proper and if not what relief I should give to these four workmen, the claim for reinstatement having been clearly given up by the 4 contesting workmen. The

question of considering the adequacy or otherwise of the retrenchment compensation and awarding additional compensation would be coming to the fore only after the legality or otherwise is considered by me. Hence, I shall study the evidence and submissions made on behalf of the management justifying their order of retrenchment which is the bone of contention in the matter.

Adverting then to the case made out by the management it is seen that the total strength of the employees in the establishment of M/s P. G. Virginkar & Co., as on 23rd March, 1974 and 1st April, 1974 was 45. Out of these workmen 13 are retrenched, the first batch of 11 having been retrenched on 25-3-74 and the second batch of two retrenched on 1-4-74. As stated above out of the 13 retrenched workmen only 4 have actively participated in the proceedings and I am confining myself to these workmen only to see and study whether the composite order of retrenchment is just and proper and whether the management had any compelling ground to resort to the process of retrenchment. Under law as laid down u/s 25F of the Act the management have to give reasons which compelled them to resort to the process of retrenchment and the notice of retrenchment dated 22-2-74 which is of a stereotype nature in respect of all 14 workmen states in para. 1 that on account of restricted supply of quota business in the commodities namely petrol and diesel by the Oil company and as a general policy to adopt re-organisation scheme in all the areas of this commercial establishment retrenchment was done by reducing the working force for reasons of economy and convenience. A strict construction of the reasoning shows that the management's main aim was at economy and for this purpose as a general policy they adopted a re-organisation scheme and simultaneously prepared a seniority list and retrenched 13 workmen in two batches, as stated above. Marginal compensation was not paid to the workmen but the same was offered to them to be collected by them from the office after the expiry of one month i.e. after the expiry of one month after notice period under sub-clause (a) of Sec. 25F of the Act. The notice itself says that the normal wages and other dues if any would be paid to them as retrenchment compensation under clause (b) of Sec. 25F. The 11 workmen were called at the office on 23-3-74 while the remaining two workmen were called on 1-4-74. The question then would be whether this is a strict compliance of the provisions u/s 25F of the Act. The second point to be noted here is whether there was also the strict compliance of the provisions u/s 25G of the Act in as much as whether the principle of 'last come first go' was followed or not while resorting to the retrenchment of the 13 workmen even though we are factually concerned with the retrenchment of the four workmen now.

In this regard it has to be noted and stated that the position of each workman stands on a different footing and I shall analyse the position at this stage to study and understand the case of the management. The workman Anant Hegde who had joined the service in 1945 had put up a service of 28 and a half years at the time of retrenchment. On record he was the seniormost amongst all and he was serving as a Sr. Clerk. Along with him there was one more person working as Sr. Clerk, but joined subsequent to Hegde by name Balaji Ghode. It has to be noted that while Hegde's services were terminated by retrenchment Balaji Ghode continued to serve in the establishment but it is claimed by the management that he is serving in another establishment of the partnership firm namely the Head office. So far as the case of Anant Hegde goes it is almost clear that the principle laid down u/s 25G was not followed in his case. In this regard it is claimed by the management that the management is free to arrange its own business and it is the sweet will and discretion of the management to re-organise its establishment and in the case of Hegde who was stated to be working as a Clerk on the petrol pump of the company was mainly doing the work of keeping the accounts of those customers to whom petrol or diesel was supplied on credit. The management while chalking out the phased programme of cutting down the expense, thought it fit to stop the practice of selling petrol and diesel on credit as it was no more economical. As Hegde was doing this work the management took a decision to abolish that post namely that of "a Accounts Clerk" who was to keep the account of "sale of petrol and diesel on credit". This is the explanation offered by the management so far as Hegde is concerned.

The second workman is Motilal Shinde who is also a clerk and his post also was abolished for similar reason as credit facility at the petrol pump was stopped and the post stood abolished. The third workman Jairam Gaonkar was a service boy on the petrol pump and his services were terminated

along with other boys as in all five delivery boys who were found to be surplus were retrenched. The fourth workman by name Sham Revankar was working as a Mechanic in the work shop. According to the management the said workman was also working as a Driver on the company car and for the reason of economy it was decided to abolish the post of the driver and so this workman was retrenched. This is how the position stands and I shall analyse the statement and evidence of the management to see whether they have retrenched the unwanted persons on the spacious ground of economy or whether they have adhered to the legal provisions of retrenchment, to retrench the group of 13 workmen.

I have already studied the ground of retrenchment as stated in the retrenchment notice. The general ground was reason for economy in view of the general policy under reorganisation scheme. However, in the subsequent Written Statement and actual evidence in court this theory has been modified and the fresh ground is added and we find an explanation to this in para. 15 of the Written Statement. It is stated that M/s P. G. Virginkar & Company which is a partnership firm was running four departments belonging to them dealing with different lines of business namely (a) Burmah Shell Dealers, (b) Automobile Dealers in respect of Premier cars and commercial vehicles and Bajaj Tempo vehicles, (c) Automobile Workshop and (d) Spare Parts Shop.

All these four departments were established at Margao only where the head office is also situated and admittedly the partnership firm was controlling the activities of all these four establishments. About Burmah Shell Dealership the partnership had three pumping stations at Margao and the pumping stations employed 20 employees then and they consisted of Accounts Clerk, Salesman, Delivery boy and lubricant boy known as lub boy. In addition to these 20 employees at the pumping station they had 10 employees in the Head Office, 12 employees in the workshop and 3 employees in the Spare Parts Shop. This is how they have accounted for the 45 employees who were in the establishment in Jan., February, 1974. They then decided to re-organise all lines of business by adopting measure of economy, such as curtailing the working hours, abolishing the clerical work at the pumping stations, curtailing the repair work at the workshop and abolishing the post of the Driver for driving office vehicles. When once this decision was taken, they prepared the seniority list but the workmen of each establishment were shown separately. In other words the order of seniority of all the 45 workmen were not taken into consideration but the seniority was considered establishment wise to retrench the workmen. It was not quite clear as to what was the position as regards the other 9 workmen and whether they were really at the tail end of the seniority list but in case of these 4 workmen the management had found it difficult to establish that the principle of 'last come first go' was followed. This was so because Anant Hegde was the seniormost amongst all and Sham Revankar working as Mechanic but styled by the management as a Driver was also senior as there were junior's to him. Hence in the case of the two, these two workmen namely Hegde and Sham Revankar the management have taken out a stand that the position of the clerical staff having been abolished at the pumping station the seniormost clerk Anant Hegde as well as the clerk Motilal Shinde became surplus and Sham Revankar is shown to be a driver also became surplus as the post of the driver for driving office vehicles was abolished. This is how the management had sought to explain its action and it is contended that the allegations of malafide and victimization attributed to the employer are all un-founded. It is therefore claimed in para. 16 of the Written Statement that the retrenchment of 13 workmen was as a result of re-organisation of business done reasonably and bonafide for reasons of economy and convenience.

In the normal circumstances the matter should have stood for trial in 1976 or so. However for reasons which are not quite clear from record the actual recording of evidence started in 1979 or so and the evidence of the above four workmen was recorded one after the other. Thereafter it was the turn of the management to prove its' case by positive and cogent evidence. In this regard there is reason to believe that the management had resorted to evasive tactics and it was not much interested in bringing the best available evidence on record. I am constrained to make these observations at this initial stage because the oral testimony led on behalf of the management consists of Managing Director, G. N. Virginkar whose examination in chief started on — date not found on the statements but from the roznama it appears that his evidence started on 7-7-80. Normally his evidence should have completed within a couple of months. However, the record shows that the evidence of this witness though the Managing Director but who had actively retired

from the partnership in 1981 protracted for years together and I find that his examination continued on 25-7-80, 16-4-82, 21-9-83, 8-2-84 12-3-86, 13-5-86 and all the recording of evidence was done before my Predecessor Dr. Noronha. It so happened that Dr. Noronha retired on superannuation in May, 1986 and since then the post was lying vacant. After I took over in November, 1987 the matter was placed before me, notices were issued to the parties and efforts were made to bring the witness G. Virginkar for cross examination. The management took many adjournments to produce this witness and lastly on the ground of ill health they got a Commission appointed and the Commissioner recorded his evidence on 2.10.88 and since then the matter is posted for further evidence if any and arguments. The recording of the evidence of this witness lasted for over 7 years and the misery of the things is that this witness who has fallen apart from his family partnership but who claims to have knowledge about the family business has two other partnership firms started by him by taking his wife and two children as the two partners. It is not directly relevant for the present proceeding but the question is who is ultimately responsible for placing the facts on record and conducting the matter on behalf of the management of the partnership firm which had resorted to retrenchment in March, 1974 and the burden u/s 25F as well as 25G is on the employer to prove that the retrenchment was bonafide one and the management had no other alternative then to resort to retrenchment in the given circumstances. Hence in the normal circumstances it is expected of the partnership firm to produce its balance sheets and other relevant records including muster roll to show whether the partnership is making any profits and what was the place of the retrenched workmen in the seniority list if any kept by the management. It has to be noted that the management has admitted by the witness Gopal Virginkar that they did not give any letters of appointment to these workmen. What they have done in 1969 was they issued the letters showing the scales of their salary obtaining in 1969. Hence in the absence of the original letters of appointment and in the absence of the muster roll it is rather difficult to understand when each of the four workmen was appointed. In the case of Anant Hegde there is no difficulty because Gopal Virginkar admits that that Hegde joined the services of the partnership started by his father even before he started holding his father and Anant Hegde joined in 1945 or so. Incidentally Anant Hegde is a relation of the Virginkar family, the 9 partners of the family being the members of Virginkar family. About the workman Motilal Shinde it is stated that he joined in 1969. However, Motilal claims that he joined in 1967 and G. Virginkar admits that saying that he worked for 7 months in one establishment and thereafter he was taken in other establishment. So there is no clear cut evidence about the year of joining the service and the service conditions applicable to the four workmen with whom we are now concerned.

So also about re-organisation scheme the list of seniority and profit and loss there is no documentary evidence produced by the management. It is admitted by the management that till 1980 when the evidence of Gopal Virginkar started the partnership was making profit and as such the question of economy under the re-organisation scheme will have to be considered only if the relevant accounts are produced. No such accounts are produced by the partnership firm. The partnership concern is a joint unit but the deed of partnership is not produced. Admittedly, the partnership is a common business: In that case the burden shifts on the management to prove the separate establishment but no evidence showing activities is produced by the management. It is admitted by the management that so far as the taxation goes a joint statement on behalf of the partnership firm was submitted to the Govt. and the assessment was done by taking the four units as joint and common. Hence, if the 4 units are really separate the question is whether there are separate profit and loss accounts. There are no separate profit and loss accounts and this is one aspect which has to be taken into consideration while considering whether the retrenchment is bonafide one because the question of the preparation of the seniority list becomes of a foremost importance while considering the principle of 'last come first go'. The management has no doubt prepared four lists in Feb., '74 showing the names of the workmen in the four units. The question is whether this is the proper statement and whether the same represents the real position in the office of the employer because all the employees maintained that they were the employees of the partnership firm and their services were interchangeable and transferable from one unit to another. In order to pin point the management on this point the advocates for the workmen filed an application on 17-12-85 asking for the production of the documents and in the absence of the production of documents and record of the partnership firm they should be allowed the inspection of

the partnership records and accounts. The request was granted by my Predecessor and in the application the advocate for the workmen complained that full inspection of all records were not given to them and only nominal documents were shown to them. It is therefore claimed on behalf of the workmen that the necessary adverse inference may be drawn against the management on this count. This is the sorry state of affairs so far as the documentary evidence goes. It must be noted here pertinently that the present management has not shown any interest in the present goings on and no active partner of the firm has cared to attend the court proceedings or to produce any of the records in possession of the partnership firm. It is seen that the entire responsibility is left on the shoulder of the ex-Managing Director Gopal Virginkar who initially claimed that he has knowledge of the working of the partnership firm but later on when the cross examination progressed he started repeating the statement that he retired from the partnership in 1981, started his own units at Margao and Ponda and the relevant documents are not in his possession. Even though his evidence runs into more than 30 pages the same is not of much help so far as the understanding of the case of the management of Party II goes. The oral evidence is unsatisfactory and the documentary evidence is perfunctory as stated above. This is how the management as utterly failed to prove that the management adhered to retrenchment as a beneficial ground for effecting economy in the management of the four partnerships and how the principle of 'last come first go' came to be adhered to. The rule of 'last come first go' is a mandatory provision as laid down and recognised by Sec. 25G of the Act. The Supreme Court have observed way back in 1960 in the case of Swadesamitram Ltd., Madras reported in A.I.R. 1960 SC page 762 wherein his Lordship Gajendragadkar J. has observed that "If a case for retrenchment is made out, no doubt, it would normally be for the employer to decide which of the employees should be retrenched; but there can be no doubt that the ordinary industrial rule of retrenchment is 'last come first go' and where other things are equal this rule has to be followed by the employer. This rule is statutorily recognised by Section 25-F of the Act. If this rule is departed it has to be justified by sound and valid reasons." The management has failed to adduce sound and cogent evidence in this matter. On the contrary the seniormost clerk Anant Hegde is retrenched and as a spacious ground is put forth saying that the post itself is abolished. This is nothing less than victimisation and the same rule does apply to the other three workmen also and I have confined my discussion to these three workmen only. I therefore find that the order of retrenchment is neither just nor proper so far as these three workmen are concerned and the question then is what reliefs these workmen are entitled to. The submissions made on behalf of the workmen which I have elaborately discussed in the foregoing paragraphs do go to show that all the four workmen are gainfully employed elsewhere and one of the four workmen is a victim of paralysis and cannot work any further. The workman Hegde has taken a partnership in some firm. So the workmen it appears are not interested in reinstatement. As laid down by the different High Courts the retrenchment made without complying with the mandatory pre-conditions of Sec. 25F is not void ab initio but it is voidable. So if a workman is retrenched without compensation or the compensation paid is inadequate the first right he has got is to challenge the order of retrenchment itself as null and void and to seek reinstatement by raising an industrial dispute. Alternatively, he can also claim compensation in case he does not want reinstatement. Accordingly, the order of retrenchment even though illegal cannot be ignored and will subsist unless set aside by the industrial adjudication and this view is held by the Supreme Court in the case of State of Bombay v. Hospital Mazdoor Sabha reported in 1960 I. L.L.J. page 251. Both the advocates for the four workmen have stated before me that the workmen would be satisfied if they are sufficiently compensated in lieu of reinstatement. About the compensation the case law says that no hard and fast rule can be laid down for the exercise of the discretion of Tribunal, as in each case, it must, in a spirit of fairness and justice in keeping with the objective of industrial adjudication, decide whether it should award compensation in lieu of reinstatement and the quantum would depend upon the facts and circumstances in each case. In the instant case we find that the workmen were retrenched way back in 1974 and since then they are struggling hard to get justice though in their own way they have found alternative ways and means of living. That by itself would not deprive them of their claim for compensation and considering the long span for 15 years for which the matter is pending, I find that the ends of justice would be sufficiently met with if compensation of Rs. 2,000/- for every

year of service is awarded to them for the loss of service between 1974 to 1989. I, therefore, feel that it would be just and proper in the circumstances of the case to award compensation to the tune of Rs. 30,000/- to each of the four workmen and that would be the relief which they would get in the present case, in the circumstances of the case.

I, therefore, pass the following award.

ORDER

It is hereby held that the action of the management of M/s P. G. Virginkar & Company, Margao, Goa, in retrenching the workmen Shri Anant D. Hegde, Shri Jairam B. P. Gaonkar, Shri Motilal A. Shinde and Shri Sham M. Revankar from services with effect from 25-3-74 is neither legal nor justified.

By way of relief it is hereby directed that the management of M/s P. G. Virginkar & Company do hereby pay an amount of Rs. 30,000/- to each of the four above workmen as compensation in lieu of reinstatement into service and in lieu of the back wages.

The claim in respect of the remaining nine workmen stands rejected as they have not participated in the proceedings and have not shown any interest in the proceeding from the beginning.

There shall be no order as to costs. Inform the government accordingly about the passing of the award.

S. V. Nevagi

Presiding Officer
Industrial Tribunal

Law (Establishment) Department
District and Sessions Court

Order

No. DSC/PP-DRK/90/1151

Shri D. R. Kenkre, Civil Judge, Senior Division and Judicial Magistrate, F. C., Bicholim, is hereby granted Earned Leave for 30 days with effect from 27th February, 1990 to 28th March, 1990.

He is also allowed to surrender of Earned Leave to the extent of 30 days in terms of Government of Goa, Department of Personnel, Notification No. 6/51/87-PER dated 16-8-1989 and obtain necessary encashment.

The sanction of encashment of Earned Leave is subject to the following conditions:

- 1) The amount of leave salary and allowances for the surrendered leave of 30 days shall be refunded forthwith to Government in one instalment or adjusted in full in the first monthly pay/leave salary bill in case the leave has to be cancelled by the competent authority (Leave Sanctioning Authority) before proceeding on leave.
- 2) He shall not be allowed to rejoin duty before the expiry of the Earned Leave sanctioned to him as above.
- 3) On return from the leave, he shall serve the Government for a period of not less than that of the Earned Leave surrendered for encashment.

Certified that he would have continued in the same capacity but for proceeding on leave.

Certified that he is reposted to his previous place of posting on expiry of the above leave period.

During Shri D. R. Kenkre's absence on leave Shri M. D. Kamath, Civil Judge, Senior Division and Chief Judicial Magistrate, Panaji, shall look after urgent Spl. Civil Suits till Shri G. V. Ratnam, Civil Judge, Sr. Div., and J. M. F. C., Mapusa, resumes his duties and Shri V. S. R. Dessai, Civil Judge, Junior Division and J. M. F. C., Satari, at Bicholim, shall look after Reg. Civil Suits and Criminal matters of his Court.

Enrico Santana Da Silva, District and Sessions Judge.

Panaji, 26th February, 1990.

Corrigendum

In the Notification of the Finance (Revenue and Control) Department No. Fin(Rev)2-36/10/71 (Part file) dated 5-3-90 published at page 657 of the Official Gazette, Series II No. 50 dated 15-3-90 in the fourth line, the date "12-6-1961" be read as "12-6-1981".

Government Press

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